SUPREME COURT, U. S.
APR 26 1976
MICHAEL RODAK, JR., CLERK

SUPREME COURT OF THE UNITED STATES

No. 75-1563

THOMAS W. AHLMAN, and
CAROL ANN AHLMAN, Husband and Wife - Plaintiffs

versus

CHRISTOPHER DURBIN
c/o Jefferson County Police Department
an Individual
JEFFERSON COUNTY COURT
Honorable Louis J. Hollenbach
Jefferson County Court House
JEFFERSON COUNTY FISCAL COURT
Comprised of
Honorable Louis J. Hollenbach
Judge, Jefferson County
c/o Jefferson County Court House
Honorable Maurice W. Archer
Commissioner
Louisville, Kentucky
c/o Jefferson County Court House
Honorable William H. Walden
Commissioner
Louisville, Kentucky
c/o Jefferson County Court House
and
JEFFERSON COUNTY POLICE MERIT BOARD
by and Through Its Members
Honorable J. Stanley Watson, Member
Honorable Shelton Weber, Member
Honorable John Fulton, Chairman Member
Honorable Charles Boone, Member
c/o Fiscal Court Building - - - - - Defendants

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF KENTUCKY

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TABLE OF CONTENTS

PAGE

Opinions of the Courts Below 2

Statement of Grounds Upon Which the Jurisdiction of This Court is Involved 2

Question Presented for Review 3

Constitutional Provisions and Statute Which the Case Involves 3

Statement of the Case 3– 4

State of Proceedings in Which Federal Questions Sought to Be Reviewed Were Raised 4

Argument Amplifying Reasons Relief on for Allowance of the Writ 4– 6

Appendix 7–15

Exhibit No. 1

Mandate of the Supreme Court of Kentucky 7

Memorandum Opinion Per Curiam—Affirming . . 8– 9

Exhibit No. 2

Notice-Motion-Order of Defendant for Summary Judgment, Filed in Clerk's Office September 26, 1973 9–10

Exhibit No. 3

Complaint 11–15

AUTHORITIES CITED

	PAGE
Fourteenth Amendment to the U. S. Constitution....	3
KRS 44.070.	5

BLEED THROUGH

SUPREME COURT OF THE UNITED STATES

No. _____

THOMAS W. AHLMAN, and
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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF KENTUCKY

To: The Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the ~~Commonwealth of Kentucky~~. UNITED STATES

The Petition of THOMAS W. AHLMAN and CAROL AHLMAN, husband and wife, for a writ of certiorari to review a judgment of the Supreme Court of Kentucky, made and entered by said Court on the 9th day of March, 1976, a copy of which is hereto appended, respectfully shows to this Court:

OPINIONS OF THE COURTS BELOW

No opinion was rendered by the trial court. The per curiam opinion of the Court of Appeals of Kentucky has not been published officially. A copy of said opinion is appended hereto as Appendix One.

STATEMENT OF GROUNDS UPON WHICH THE JURISDICTION OF THIS COURT IS INVOLVED

The date of the judgment sought to be reviewed and the date of its entry are the 8th day of October, 1973, a copy of which is appended as Appendix Two. A copy of the Civil Complaint is appended as Appendix Three.

No order has been granted for rehearing or for extension of time in which to petition for certiorari.

The statutory provision believed to confer on this Court jurisdiction to review the judgment of the Court below is 28 USC, 1257 (3).

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QUESTION PRESENTED FOR REVIEW

May Jefferson County, a political subdivision of the Commonwealth of Kentucky, constitutionally assert a defense of sovereign immunity to the tort claim of Carol Ahlman, an innocent bystander, injured by a ricochet police bullet.

CONSTITUTIONAL PROVISIONS AND STATUTE WHICH THE CASE INVOLVES

The Fourteenth Amendment of the Constitution of the United States, which in pertinent part states; no state shall deny to any persons within its jurisdiction equal protection of the laws.

No provisions of the Kentucky Revised Statutes are in point here, as sovereign immunity is not a statutory provision, but a jurisprudential doctrine.

STATEMENT OF THE CASE

On August 9, 1969 Carol Ahlman, an innocent bystander, was leaving Hunt's Restaurant at Louisville, Kentucky and was in the entrance way of said restaurant when struck between the eyes by a ricochet bullet fired by officer Durbin, of the Jefferson County Kentucky Police Department. As a direct and proximate result thereof she was rendered industrially blind, and found by the United States Department of Health, Education, and Welfare, Social Security Administration, to be totally and permanently disabled.

At the time of the incident her husband, Thomas Ahlman, was serving in the United States Army in Vietnam, and joined in the action for loss of consortium.

STATE OF PROCEEDINGS IN WHICH FEDERAL QUESTIONS SOUGHT TO BE REVIEWED WERE RAISED

The Constitutional question was raised by oral argument in the Court of first instance, the Jefferson Circuit Court. The trial court entered a summary judgment against plaintiffs on the defense of sovereign immunity.

Upon appeal by the Ahlmans to the Court of Appeals of Kentucky (Now Supreme Court of Kentucky), Appellants in their Brief argued that the Judgment should be reversed because of the denial of equal protection of the laws of Kentucky, and the United States.

The parties extensively argued the issue of sovereign immunity in Kentucky on appeal.

ARGUMENT AMPLIFYING REASONS RELIEF ON FOR ALLOWANCE OF THE WRIT

This case presents questions of the first instance relating to the Constitutionality of the Kentucky jurisprudential doctrine, which has not been heretofore passed upon by this Court.

The case is of particular significant interest in that the political subdivision involved is the only political

BLEED THROUGH

subdivision of the Commonwealth of Kentucky that attempts to assert any claim of sovereign immunity.

The State of Kentucky has waived sovereign immunity for specified agencies of state government pursuant to Kentucky Revised Statute 44.070, and Kentucky municipalities are subject to general civil tort liability.

The County Government (of Jefferson County) is the only entity of State and Local Government which asserts a general immunity from tort actions.

The Ahlmans state that this so called immunity on its face and as applied is antagonistic to the equal protection and due process clauses of the Federal Constitution.

Moreover, the Jefferson County Government has waived sovereign immunity by the purchasing of automobile liability insurance and directing its carriers not to assert the defense of sovereign immunity in such civil actions.

A collateral question raised is whether or not the waiver of sovereign immunity by the Jefferson County government denied equal protection and due process to the Ahlmans in violation of the Fourteenth Amendment to the United States Constitution.

The Ahlmans state that they have been denied the equal protection of the law of Kentucky by the unlawful discrimination against them by bestowing of special treatment by Jefferson County on a class of automobile tort victims by refusing to assert its so called defense of sovereign immunity against those victims, but without stating a legitimate purpose, assert the said defense

against the Ahlman's tort claim, which is not automotive related. The Constitutional rights of the Ahlmans have been abrogated by the imposition of this ignominious doctrine on its face and as applied.

It is suggested that the Supreme Court of the United States is the final authority on the interpretation of the Federal Constitution on this question.

WHEREFORE, petitioners, pray that a writ of certiorari be issued out under the seal of this Court, directed to the Supreme Court of the Commonwealth of Kentucky, to the end that the judgment of the Supreme Court of Kentucky may be reviewed and reversed by this Honorable Court.

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